In the High Court of Uttaranchal, at Nainital.

Criminal Appeal No. 351/2001
(Old No. 2152/1986)

1- Hakim Singh
2- Parbinder Singh,
Both sons of Dayal Singh,
R/o Chill, P.S. Laxman Jhula,
District Pauri Garhwal ....Appellants.

Versus

State of U.P. ....Respondent.

Sri Pankaj Miglani, Advocate for the appellants.
Sri A. Rab, learned Alll. G.A. for the State.

Hon'ble B.C. Kandpal, J.

The appellants have preferred this appeal against the judgment and order dated 1-8-1986, passed by Special Judge/Sessions Judge, Pauri Garhwal, in Special Criminal Case No. 3 of 1986, State Vs. Hakim Singh and another U/S 3/7 Essential Commodities Act, whereby the appellants were convicted U/S 3/7 E.C. Act and both of them were sentenced to three months R.I. and a fine of Rs. 500/- and in default of payment of fine to further unto one month's imprisonment.

2- Brief facts of the case are that accused/appellants Hakim Singh and Parbinder Singh are brothers and were dealing in food-grains. They had a Parchooni shop at Chilla within the circle of P.S. Laxmanjhula. On 19-12-1985, at about 9.30 A.M. S.N. Jamloki, Food Inspector, Pauri made surprise inspection of the shop of the accused. Parbinder Singh was then sitting on the shop. The food Inspector found 18 bags of 90 kgs. Wheat flour, weighing 16.50 quintals and 30 kgs. Atta in an open bag, lying inside the shop. The accused on demand could not produce a licence to store or deal in any item of food-grain of more than 10 quintals in weight, thereby the accused were dealing in Atta in contravention of clause 2(c) of U.P. Food Grains Dealers (Licensing and Restriction on Hoarding) Order, 1977

(hereinafter referred as 'Order'). The food Inspector seized the entire Atta (16.05 quintals) and delivered the custody of the same to one Pushkar Singh, a local Fair Price Food Granis Dealer, as Supurdar.

4- A written report of the incident, Ext. Ka.5 was delivered by the Food Inspector, at P.S. Laxmanjhula on 19-12-2005 at 3.45 P.M. On the basis of written report, chick F.I.R., Ext. Ka.6 was drawn at the concerning Police Station and case was registered against the accused in the General Diary, the copy of which is Ext. Ka.7. Sub Inspector Mahendrapal Singh, conducted the investigation in the case. He visited the place of occurrence and prepared site-plan, Ext. Ka.8. He also obtained sanction for prosecution against the accused persons from the competent authority, Ext. Ka.9. On completion of investigation, charge sheet, Ext. Ka. 10 was submitted against the accused/appellants.

5- The accused in their statement admitted about the inspection of the shop made by the Food Inspector at the relevant time. They also alleged that they have not contravened the provision of the 'Order' as the Aatta belong to some other person lying outside the shop.

6- The prosecution in support of its case examined Food Inspector S.N. Jamloki, P.W. 1, Pushkar Singh, P.W. 2 and I.O. Mahendrapal Singh, P.W. 3.

7- P.W. 1, S.N. Jamloki, Food Inspector stated about the inspection of the shop made by him. He deposed that at the time of inspection Parbinder Singh, brother of Hakim Singh and the servant Surendra Singh were sitting in the shop. 18 bags of Atta were kept

inside room of the shop and one bag having 30 Kgs. wheat flour was kept outside of the shop. He also deposed that each bag was containing 90 Kgs. Atta. On asking, the accused told that the wheat flour was two bills dated 9-11-85 and 23-11-85, according to which ten bags of wheat flour each were purchased by the accused. The Food Inspector took sample of wheat flour from each bags and sealed them. He also seized the wheat flour and gave it in the Supurdagi of Pushkar Singh. He also deposed that thereafter he lodged report Ext. Ka.5 at P.S. Laxshmanjhula.

8- P.W. 2 Bali Singh Negi had his shop at Chilla market at the relevant time. He was present at the place of occurrence. He deposed that in the month of December 1985 Food Inspector had inspected the shop of accused and found 16 ½ quintals wheat flour inside the shop. This witness also alleged that the Food Inspector prepared Fard, Ext. Ka.3 and gave the wheat flour in his Supurdargi.

9- P.W.3, Mahipal Singh conduced investigation in the matter. He proved the site plan, Ext. Ka.8 and sanction, Ext. Ka. 9 for launching prosecution against the appellants, obtained by him from the District Magistrate, Pauri Garhwal and charge sheet, Ext. Ka. Submitted against the accused.

10- In their statements U/Ss 313 Cr.P.C. the accused/appellants stated that they have not contravened the provision of any Order. They admitted the seizure of wheat flour but stated that 10 bags Atta were kept outside the shop, which belonged to some Gujar. The accused also examined Alam Gujar as

D.W. 1in their defence in order to allege that the wheat flour kept in the Varandah of the shop of the accused belonged to him.

11- The trial court on assessment of material on record and having heard learned counsel for the parties held the accused/appellants guilty of contravention of clause 5(1) of U.P. Food Grains Licencing Order, 1977 and accordingly convicted each of them U/S 3/7 of the E.C. Act and sentenced them to undergo imprisonment for 3 months and fine of Rs. 500/- each and in default of payment of fine to further undergo one month's further imprisonment.

12- Feeling aggrieved the appellants have filed the appeal before the Allahabad High Court which was transferred to his Court on creation of new State.

13- I have heard learned counsel for the appellants, learned A.G.A. and perused the record.

14- As far as the merit of this case is concerned, the record reveals that P.W. 1 - S.N. Jamloki, Food Inspector has deposed in his evidence that 18 full bags of Atta were found stock in the shop belonging to the appellant - Hakim Singh, while 30 kgs of Atta was lying in the outer side of the shop in a open bag for retail sale. It has also been deposed by this witness that the appellant – Parbinder Singh was sitting in the shop and he told the Food Inspector that 10 bags of Atta were purchased from Firm Kamal Kumar Ashok Kumar, Jwalapur. He produced the purchase vouchers, which are available on record as Ex.Ka. 1 and 2.

15- This witness has further deposed that the recovery proceedings took place in the presence of P.W. – 2 Pushkar Singh who is the local fair price food grain dealer and they recovered Atta entrusted to the custody of P.W. 2 Pushkar Singh.

16- The deposition of P.W. – Pushkar Singh shows that he was caught at the shop by the Food Inspector soon after he found wheat floor stock in the shop in excess of the statutory limit of 10 quintal. This witness has also deposed that 18 full bags of Atta were lying found in the outer side of the shop, while 30 kg of Atta was recovered in the open bag outer side of the shop for retail sale.

17- I could not find any infirmity in the evidence of both the prosecution witnesses, which may create any doubt with regard to their credibility. It was the appellant – Parbinder Singh who was managing the affair of the shop at the time of the surprise inspection conducted by the Food Inspector. Therefore, in the absence of any evidence to the contrary this appellant is also to be held as owner of the recovered Atta from the shop.

18- The defence has examined D.W. 1 – Alam Gujar and this witness has deposed that he in fact purchased 10 bags of Atta for his own use, which was kept in the shop of the appellant. But the deposition of this witness appears to be highly doubtful. This witness has admittedly never requested any authority for releasing of his Atta as owner of the same. This witness also could not disclose the rate in which the Atta was purchased. He also could not disclose the total price paid by him for purchase of the 10 bags of Atta.

Therefore, the defence witness produced by the accused/appellants is not going to extend any help to them.

19- Learned counsel for the appellant has also submitted that the sanctioning authority i.e. District Magistrate has not disclosed the relevant order which is alleged to have been contravened in the sanctioning order dated 28.10.1986.

20- This argument is also devoid of any force. It is true that the sanctioning order does not indicate the order which is alleged to have been violated but at the same time it is to be noted that in the First Information Report it is quite clear that the Food Inspector has mentioned the violation of the U.P. Food Grain Dealers Licenceing (Restriction and Hoarding Order), 1976 as amended has been committed which is punishable under Section 3 (7) of the Essential Commodities Act.

21- Further the specific questions were put to the accused/appellants that they had violated the provisions of U.P. Food Grains Delears Licenceing (Restriction and Hoarding Order), 1976, which is punishable under Section 3(7) of the Essential Commodities Act. Therefore, in case, if the relevant order is not mentioned by sanctioning authority in the order for granting the sanction, the same is not going to vitiate the trail as it was in the knowledge of the accused/appellants that they had been charged for the violation of the U.P. Food Grains Dealers Licenceing (Restriction and Hoarding Order), 1976 which is punishable under Section 3 (7) of the Essential Commodities Act.

22- On the basis of the evidence on record, I come to the conclusion that the appellants have been rightly convicted by the special judge, Pauri Garhwal for having committed the contravention of the provisions of U.P. Food Grains Dealer Licenceing Order, 1977 which is punishable under Section 3 (2) (d) read with Section 7(a) of the Essential Commodities Act, 1955.

23- Learned counsel for the appellant has further argued that since the matter is quite old, hence, some leniency be adopted in the sentence of the appellants.

24- I again do not find any force in this argument. The trial court has awarded minimum sentence to the appellant which does not required any interference.

25- I do not find any infirmity in the judgment passed by the trail court convicting and sentencing the appellants by way of the impugned judgment dated 01.08.1986 and the appeal is liable to be dismissed and the impugned judgment passed by the Sessions Judge, Pauri Garhwal deserved to be confirmed.

26- Accordingly the appeal is dismissed. The impugned judgment and order dated 1-8-1986 passed by Special Judge/Sessions Judge, Pauri Garhwal in Special Criminal Case No. 3 of 1986 is hereby confirmed.

27- Let the record be immediately sent back to the court concerned for compliance for the order.

(B.C. Kandpal, J.)

Dated: July 25, 2006
Aswal